

STATE OF MICHIGAN
COURT OF APPEALS

In re Curtis W. Hill.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS W. HILL,

Defendant-Appellant.

UNPUBLISHED

October 12, 1999

No. 210783

Wayne Probate Court

Juvenile Division

LC No. 97-352740

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ.

PER CURIAM.

Defendant (DOB 11-30-81) appeals as of right from the probate court's order committing him to the custody of the Family Independence Agency (FIA). We affirm.

Defendant was charged as a juvenile with armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Complainant testified that he and several friends were waiting at a bus stop near their school when two males, one of whom was defendant, approached and asked if the boys were gang members. Complainant stated that defendant demanded his money, and then defendant and the other male struck him in the head. While complainant testified that he did not know if defendant was armed, other witnesses, including a school employee who related what complainant told him, testified that defendant displayed a gun. Defense counsel elicited testimony that both complainant and another witness had identified defendant in a lineup approximately three weeks after the incident.

The court found defendant guilty as charged. Because defendant was found guilty of violating a criminal law and using a firearm, commitment to the FIA was mandatory. MCL 712A.18g(1); MSA 27.3178(598.18g)(1).

* Circuit judge, sitting on the Court of Appeals by assignment.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that the representation so prejudiced the defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Counsel is presumed to have afforded effective assistance. A defendant can overcome that presumption by showing that counsel's failure to perform an essential duty resulted in prejudice. *People v Stubli*, 163 Mich App 376, 379; 413 NW2d 804 (1987).

Defendant argues that he was denied the effective assistance of counsel at trial because counsel failed to make an opening statement or a closing argument, failed to move for an evidentiary hearing to determine if the pre-trial identification procedure was tainted, *United States v Wade*, 399 US 218; 87 S Ct 1926; 18 L Ed 2d 1149 (1967), and failed to object to the admission of hearsay testimony. Defendant contends that counsel's complete failure to present a defense resulted in his mandatory commitment to the FIA. MCL 712A.18g(1); MSA 27.3178(598.18g)(1).

We disagree and affirm. In determining whether counsel rendered effective assistance, counsel's performance must be measured against an objective standard of reasonableness, and without benefit of hindsight. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). The decision to waive opening statement and/or closing argument is a matter of trial strategy, and we will not presume that such a decision results from ineffectiveness. *People v Johnson (On Rehearing)*, 208 Mich App 137, 142; 526 NW2d 617 (1994). Defendant points to no evidence that would suggest that the pre-trial identification procedure was tainted, and thus has not established that an evidentiary hearing was warranted. *People v Laidlaw*, 169 Mich App 84, 93; 425 NW2d 738 (1988). Defendant has not overcome the presumption that counsel rendered effective assistance in this regard. *Stubli, supra*. Finally, any error resulting from counsel's failure to object to the admission of hearsay testimony was harmless because the same fact, i.e., that defendant was armed, was shown by other, competent testimony. *People v Miller*, 165 Mich App 32, 50; 418 NW2d 668 (1987). No prejudice resulted from counsel's failure to object. *Pickens, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Brian K. Zahra
/s/ Scott L. Pavlich